

BOARD OF APPEALS CASE NO. 5157

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BEFORE THE

APPLICANT: John Healy

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ZONING HEARING EXAMINER

**REQUEST: Special Exceptions to locate
construction services and commercial equipment
in the Agricultural District; 2024 Eden Mill Road,
Pylesville**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 7/10/02 & 7/17/02

HEARING DATE: October 14, 2002

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Record: 7/12/02 & 7/19/02

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ZONING HEARING EXAMINER'S DECISION

The Applicant, John K. Healy, is requesting a special exception, pursuant to Section 267-53D(1) and 267-53H(1) of the Harford County Code, to allow construction services and commercial vehicles and equipment storage in an AG/Agricultural District.

The subject parcel is located at 2024 Eden Mill Road, Pylesville, Maryland 21132 and is more particularly identified on Tax Map 9, Grid 3B, Parcel 79, Lot 6. The subject parcel consists of 21.2904± acres, is zoned AG/Agricultural and is entirely within the Fourth Election District.

PROCEDURAL HISTORY

The case initially came on for hearing before the Hearing Examiner on December 17, 2001. The Hearing Examiner issued his decision recommending approval of the requested Special Exception on January 15, 2002. The Hearing Examiner, in his January 15, 2002 decision, recommended six (6) conditions of approval that were stated as follows:

1. The Applicant shall prepare and submit for review and approval to the Department of Planning and Zoning a landscaping plan that will result in the storage area being fully screened from view of adjacent properties and public roads. This may require the erection of a building sufficient in size and height to accommodate the Applicant's equipment.

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2. The Applicant shall not increase the size of the storage area without further review and approval by the Board of Appeals.
3. This approval extends to the Applicant only and may not be sold, conveyed or otherwise transferred to another owner.
4. The Applicant shall submit a detailed site plan for review and approval by the Department of Planning and Zoning.
5. The Applicant shall submit for review and approval by the Department of Planning and Zoning a detailed lighting plan.
6. The Applicant shall obtain any and all necessary permits and inspections.

Opponents of the special exception request sought timely review of the Hearing Examiner's decision by the Harford County Council sitting as the Board of Appeals. After a hearing on July 2, 2002, the Board of Appeals remanded the case back to the Hearing Examiner and stated:

“...in order to require the Applicant to submit a landscaping plan that delineates the Applicant's proposal to fully screen adjacent properties, including but not limited to type, height and location of trees; as well as a detailed lighting plan, which shall address that exterior lighting shall be directed on-site and in such manner that it does not adversely impact the surrounding properties.”

TESTIMONY OF WITNESSES/FINDINGS OF FACT

The parties appeared again before the Hearing Examiner on October 14, 2002. Mr. Stanley Kollar appeared as a qualified expert in the fields of biology, environmental consultation and nurseryman. Mr. Kollar explained that he currently operates a nursery and has a background in lighting plans, landscaping and environmental impacts. Mr. Kollar, using photographic exhibits (Applicant's Remand Exhibits 1A, 1B, 1C), field delineations of existing tree stands (Applicant's Remand Exhibit 2), and line of sight diagrams (Applicant's Remand Exhibit 8), demonstrated to the satisfaction of the Hearing Examiner that the area intended to be used for storage of construction vehicles and supplies can be totally screened by the following:

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- 1. enclosing the entire storage area with an 8 foot high stockade fence;**
- 2. planting a double row of conifers around the perimeter of the storage area in staggered double rows, 15 to 20 feet on center, trees to be 12 feet high when planted; and**
- 3. The total number of trees necessary to achieve full screening would be 50.**

Additionally, Mr. Kollar described the lighting planned for the site. There will be two lights within the storage area, both of which will be 12 feet high and have downward directed lights parallel with the ground that will be fully cloaked so there is no light shining from these lights in the direction of adjacent properties (Applicant's Remand Exhibit 9).

Mr. John Healy appeared and testified that he is willing to plant the tree screening and install lighting as described by Mr. Kollar. He also stated that none of these lights will be left on at night. They are intended only to be used when necessary to work in the area after hours. Nighttime use will be very limited according to the witness and lights will be turned off after activities cease for the night. Those activities normally cease at or near sunset and sunup particularly in fall and winter when the days are shorter.

Ms. Aimee O'Neill appeared as an expert real estate appraiser and testified that she felt the plan proposed by Kollar and agreed by Healy was more than adequate and that no adverse impact to the value of adjoining properties would result from approval of this plan.

For the opponents appeared Robert Farmer who is an expert landscape designer and nurseryman. Mr. Farmer agreed with Mr. Kollar, that the area could be fully screened from view of adjacent properties with both the stockade fence and double rows of conifers on 15-20 foot centers. Where Mr. Farmer and Mr. Kollar differed was on the type of conifers and the overall height. Kollar had recommended 12 foot trees, Farmer recommended only 12 foot trees on 2 sides of the storage area while 16 foot trees would be planted on the side of the storage yard closest to the Steele property line. Farmer does not favor white pine or frasier fir although he admitted these were fast growing and inexpensive trees. Farmer favors Leland Cypress although he admits they will cost \$1200 to \$1600 per tree at the 16 foot height he is recommending (and assuming they are installed by a landscaper). Kollar on the other hand did not favor Leland Cypress because of high mortality/low survivability and cost.

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Mrs. Linda Steele appeared in opposition to the request and stated that she expects full screening from every level of her home as soon as trees are planted. In other words, she does not want to wait for growth of trees to accomplish full screening. She also objects to any lighting stating that she likes living in the woods and objects to all lighting.

STIPULATION OF CONDITIONS OF APPROVAL/ CONCLUSION AND RECOMMENDATION

After some off the record discussion all of the parties agreed on a landscaping, planting and lighting plan. The Hearing Examiner had each of the parties put their agreement to the following on the record and the Hearing Examiner, continuing to recommend approval of the Special Exception adopts the following stipulated conditions as additional conditions of approval:

1. Landscape plan will follow the planting chart provided as Protestant's Exhibit No. 2 which includes the following provisions:
 - a. Conifers shall be planted as depicted on Exhibit No. 2 in staggered double rows, at 5 to 20 feet on center.
 - b. Conifers shall consist of Douglas fir and Norway spruce
 - c. Trees along Steele property line shall be 14 feet minimum in height at the time of planting.
 - d. Trees on the other two sides of the storage area as depicted on Exhibit No. 2 shall be 12 feet minimum in height at the time of planting.
2. Mr. Kollar and his firm will supervise all plantings.
3. The Applicant shall erect a stockade fence, 8 feet in height within 30 days of obtaining a permit for same. The stockade fence will surround the entire storage area with the exception of the entrance.

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4. Any plantings required hereunder shall begin as soon as practical after receipt of final permits consistent with approval of this special exception and shall be planted pursuant to a planting schedule as submitted to and approved by the Department of Planning and Zoning and plantings shall be completed no later than May 1, 2003.
5. Applicant shall maintain the screening planted pursuant to this approval and agrees to replace any trees that perish with trees of the same species and height as those originally planted.
6. The Lighting plan shall be consistent with the Kollar plan identified as Applicant's Remand Exhibit 9 and shall consist of no more than two lights of a maximum of 12 feet in height. Each light shall be designed to be downwardly directed and fully cloaked. Lights shall not be left on overnight.

All other conditions of approval as recommended by the Hearing Examiner in his decision dated January 15, 2002 continue to remain conditions of approval.

Date OCTOBER 24, 2002

William F. Casey
Zoning Hearing Examiner